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Report of the Working Group on the Universal Periodic Review*

Malta

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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Responses of Malta to the recommendations contained in paragraph 102 of the report of the Working Group on the Universal Periodic review (A/HRC/25/17)

1. Malta thanks all delegations for their recommendations, comments and questions made.

2. Out of the 134 recommendations made, Malta has accepted 94 recommendations, either in full or in part.

3. The 134 recommendations have been addressed as follows.

Human rights protections

International instruments

4. Malta accepts recommendations: 102.42, 102.28, 102.29, 102.30, 102.31, 102.32.

5. Malta accepts in part recommendations: 102.1, 102.14, 102.15, 102.16, 102.17, 102.18, 102.19, 102.20, 102.21, 102.38, 102.43.

6. Malta does not accept recommendations: 102.2, 102.3, 102.4, 102.5, 102.6, 102.7, 102.8, 102.9, 102.10, 102.11, 102.12, 102.13, 102.22, 102.23, 102.24, 102.25, 102.39.

102.2, 102.3, 102.4, 102.5.

7. Malta will not be acceding to the Convention for the time being in view of the fact that Malta has not encountered cases of enforced disappearance.

102.6, 102.7, 102.8, 102.9, 102.10, 102.11, 102.12, 102.13.

8. Malta does not intend to sign the ICRMW, given that insufficient distinction is made in the Convention between the rights of regular and irregular migrants.[1]

102.14, 102.15, 102.16, 102.17, 102.18.

9. The ratification of the Optional Protocol is still under consideration by the Maltese Government. The necessary legal requirements need to be fulfilled before ratification can be carried out.

102.19, 102.20, 102.21.

10. Competent authorities are considering withdrawing Malta's reservations to Articles 11, 13 and 15. However, Malta stands by its original reservation to article 16.

102.22, 102.23, 102.24.

11. Malta is in the process of considering the possibility of putting in place the necessary structures to be able to ratify the Optional Protocols of these Conventions.

102.25.

12. By means of Act No. XXIV of 2002, the crime of genocide was introduced in the Criminal Code and, therefore, punishable under domestic law.

102.28, 102.29, 102.30, 102.31, 102.32.

13. The National Commission for the Promotion of Equality (NCPE) is intended to be widened to become a Commission for Human Rights and Equality.

102.38.

14. The legal structure of the Office of the Ombudsman fully conforms to the Paris Principles, the Belgrade Principles and the recently approved resolution of the Parliamentary Assembly of the Council of Europe regarding the "Strengthening of the institution of Ombudsmen in Europe".

Protecting the rights of individuals and vulnerable groups and promoting equality

Equality

15. Malta accepts recommendations: 102.26, 102.51, 102.52, 102.54, 102.55, 102.64, 102.65, 102.66, 102.96, 102.98, 102.103, 102.104.

16. Malta does not accept recommendations: 102.47, 102.53, 102.92, 102.93, 102.94, 102.95.

102.26.

17. NCPE is working on the draft proposal on cohabitation legislation.

102.51.

18. NCPE will provide training to educators to further empower them to endorse equality and non-discrimination issues per ground, including gender and family responsibilities.

102.52, 102.55.

19. The 'Equality Mark' is an ongoing commitment with a view to further develop the Mark in the future.

20. As a result of various measures carried out at a national level, the female employment rate in Malta increased by 8.7% in five years, and more women are employed in full-time jobs.

102.64, 102.65, 102.66.

21. In 2012, the hate crime legislation (the Criminal Code) was extended to cover additional grounds, including gender identity and sexual orientation.[2]

22. Another Bill currently being discussed proposes the introduction of protection from discrimination on the ground of sexual orientation.[3]

23. The Government is also working on a 'Gender Identity Bill' to enhance the rights of every person to affirm their own gender, and to have their gender affirmation legally recognised.

24. Amendments to the Civil Code removed the legal obstacles for persons who have undergone a legally recognised change in sex to be considered as pertaining to the acquired sex for all intents and purposes of civil status, including marriage.

102.96.

25. NCPE and The Forum for the Family are currently revisiting the definition of Family and updating the Family policy in order to better reflect today's reality.

102.103.

26. Government is steadfastly committed to eliminate all socially or culturally constructed barriers for persons with disabilities through the Equal Opportunities (Persons with Disability) Act 2000.

102.104.

27. There is a year-on-year increase in the Government's funding of the provision of community, residential, day services and professional services to persons with disability.

Combating trafficking in persons

28. Malta accepts recommendations: 102.27, 102.81, 102.82, 102.83, 102.84, 102.85, 102.86.

102.27, 102.81, 102.82, 102.83, 102.84, 102.85, 102.86.

29. Malta is currently implementing its second National Action Plan on Combating Trafficking in Persons, which covers the period January 2013–December 2014.

30. Whilst victim referral arrangements are in place, action is presently ongoing with a view to further improve liaison between stakeholders.

31. Act No. XVIII of 2013 amends Criminal Code provisions relating to human trafficking. The amendments provide for an increase in penalties applicable to human trafficking offences, whilst it introduces new offences, including the offence of knowingly utilising the services of a human trafficking victim.

32. The Act also makes relevant compensation accessible to victims of human trafficking.

33. Inspections are held by the competent Police authorities at premises deemed to be 'at risk' from a human trafficking point of view.

Discrimination

34. Malta accepts recommendations: 102.40, 102.50, 102.57, 102.59, 102.110.

35. Malta accepts in part recommendations: 102.33, 102.34, 102.35, 102.41, 102.58, 102.60, 102.61, 102.62, 102.63.

36. Malta does not accept recommendations: 102.36, 102.37.

102.33, 102.34, 102.35.

37. NCPE capacity is expected to be strengthened to enhance its resource capacity and knowledge on equality and non-discrimination on all the grounds within its remit, including race and ethnic origin.

102.36, 102.37

38. The Office of the Ombudsman is by law limited to the investigation of complaints against the public administration and entities and authorities over which the Government has effective control. It cannot investigate complaints in the private sphere.

102.40.

39. Research on underreporting of discriminatory cases has been carried out and to this end NCPE is working to further intensify efforts and ensure measures in this regard are effective.

102.57, 102.58, 102.59, 102.60, 102.61, 102.62, 102.63.

40. The Maltese authorities will continue to combat racism and xenophobia, including by means of the prosecution of those responsible for racist and/or xenophobic acts.

41. The stemming of the development of racism and xenophobia is an ongoing process through training and awareness raising. It is envisaged that efforts will be strengthened in the context of the widening of the NCPE's remit.

102.110.

42. NCPE will organise an Anti-Racism Theme Day to disseminate messages on anti-racism and promote diversity and inclusion through music, entertainment, activities for children and games.

43. Training on diversity management will be provided to employers within the public administration as well as within the private sector to create a culture for diversity and empower employers to actively deal with diversity within their workplace as an added value.

44. NCPE provides training to persons from the African minority residing in Malta on lobbying and advocacy, mainly focusing on human rights to empower them and further facilitate their integration in society.

Children

45. Malta accepts recommendations: 102.44, 102.45, 102.97.

46. Malta does not accept recommendation: 102.56.

102.44, 102.56.

47. The National Children's Policy is currently being reviewed.

102.45.

48. Malta has well-developed prevention programmes both within the school context and in wider social contexts and every effort is being made to ensure that these are continued and further developed.

102.97.

49. In accordance with Article 272 of the Civil Code (Cap 16) of the Laws of Malta, persons specified by law, are bound to give notice of all births occurring in Malta. Furthermore, Article 288 indicates the obligation of the 'drawing up' and of the delivery of

every act of birth to the Director, Public Registry. Finally, Article 247 places an obligation on the Director Public Registry to register each birth within 30 working days from receipt.

Protecting the rights of migrants, refugees and asylum seekers

50. Malta accepts recommendations: 102.46, 102.88, 102.89, 102.90, 102.106, 102.107, 102.108, 102.109, 102.111, 102.112, 102.113, 102.114, 102.115, 102.116, 102.117, 102.118, 102.119, 102.120, 102.121, 102.122, 102.123, 102.124, 102.125, 102.126, 102.127, 102.129, 102.130, 102.131, 102.132, 102.133, 102.134.

51. Malta does not accept recommendations: 102.49, 102.128.

102.46.

52. Malta will continue abiding by its international obligations as regards search and rescue and continue cooperating with neighbouring countries.

102.49.

53. Reforms to the detention framework will be introduced in compliance with the re-cast Reception Conditions EU Directive (Directive 2013/33/EU).

102.88, 102.89, 102.90, 102.114, 102.115, 102.116, 102.117, 102.118, 102.119, 102.120, 102.121, 102.22, 102.124, 102.125, 102.129, 102.130, 102.133, 102.134.

Detention legislative framework

54. Whilst Malta will retain its detention policy, reforms will be introduced with a view to comply with the re-cast Reception Conditions Directive (Directive 2013/33/EU), which will be transposed into national legislation.

55. With regard to detention in the context of return proceedings, legislative amendments to the Common Standard and Procedures for returning Illegally Staying Third Country Nationals Regulations are currently underway with a view to periodically reviewing grounds of detention.

56. Third country nationals shall have their detention reviewed either on application or ex officio by the Principal Immigration Officer at reasonable intervals of time which, in any case, shall not exceed three months. In the case of detention periods of six months or more, the Principal Immigration Officer shall carry out such review and notify the competent Board which shall supervise and, where necessary, revise such review.

Reception conditions

57. In its continued effort to ensure the well-being and protection of migrants and their rights, Government ensures that refurbishment of detention and open centres is carried out regularly.

Conditions at Detention Centres

58. Maintenance and refurbishment at the different Detention Centres is continuously being conducted, in order to ensure the upkeep of adequate living conditions.

59. EU Funds were also used in Detention Centres to cater for the urgent needs generated by difficult circumstances.[4] Mobile homes were also introduced within the centres. Other initiatives were being undertaken to provide the residents with various training opportunities during their stay in the closed centres.

60. Persons who have been detained are given a pamphlet informing them of their rights. They are also informed that they have a right to appeal their removal order and their detention order, and that they are entitled to apply for asylum. Asylum seekers are also assisted by interpreters, provided by the Office of the Refugee Commissioner.

Conditions at Open Centres

61. Improvements were also made at Open Centres in order to improve the physical environment of Open Centres.

The utilisation of Detention by the Maltese authorities

62. The detention requirement does not apply across the board, as vulnerable persons, including unaccompanied minors, women with children, families and disabled persons are not subject to detention. Medical checks are systematically carried out for every immigrant upon arrival and vulnerable migrants are provided with alternative accommodation as well as any special attention they may require, such as health care. Minors receive the same rights as Maltese minors, including the right to attend state schools. When a person is determined to be an unaccompanied minor asylum seeker, an interim care order appointing a legal guardian is immediately issued until a care order is issued.

63. Whenever there are doubts as to whether a migrant is a minor or otherwise, it is assumed that the migrant in question is a minor. In such cases the freedom of these persons is restricted only pending medical clearance, not age assessment.

Minimising the duration of detention for asylum seekers

64. Most asylum applications are determined at first instance within 6 months or less, which means that most genuine asylum seekers are not detained for more than 6 months, even though the maximum duration of detention for asylum seekers is in fact of 12 months. Vulnerable asylum seekers are not subject to the detention requirement.

65. Additional safeguards to be introduced by way of transposition of the re-cast Reception Conditions Directive will further contribute towards ensuring that asylum seekers will not be detained more than is strictly necessary. Implementation of this Directive will entail the introduction of free legal aid in the context of challenging detention. Free legal aid at asylum appeals stage is already available.

102.106, 102.107, 102.108, 102.109, 102.123, 102.126, 102.127, 102.132.

66. Malta seeks to take measures, both within the European Union and internationally, with a view to preventing irregular migration, particularly as this may result in loss of life in the desert or at sea.

67. Malta urges the European Union to step up cooperation with key third countries with a view to addressing the phenomenon of irregular migration more effectively and fight smuggling operations and related criminal activities.

68. Malta seeks to protect the pertinent rights of all migrants, including those who reach the country illegally. Irregular migrants are informed of their rights, including the possibility to challenge detention and removal orders, as well as the right to file an asylum application. Practically all irregular migrants in Malta file an asylum application, which demonstrates that the system is readily accessible. Malta has a consistently high asylum recognition rate, which attests to the fairness of the asylum system.

69. As regards migrant children, including unaccompanied minors, their status is taken in due consideration in all asylum proceedings, with the best interest of the child being

given priority. Free legal representation is provided as required in terms of relevant legislation, including in particular the Refugees Act.

70. Children of irregular migrants, refugees and asylum seekers have the same access to State education and health services as Maltese nationals. Unaccompanied minors are issued with a Care Order in accordance with pertinent Maltese legislation.

102.111, 102.113.

71. Malta will continue making necessary efforts to protect the rights of migrants.

72. Those granted protection have access to all relevant rights provided for by the European Union's acquis, including access to the labour market, health services and social benefits.

102.128.

73. Malta agrees with the principle that unaccompanied minors should not be detained. No amendments to its legislative framework are required since Maltese criminal law does not feature provisions relating to the detention of unaccompanied minors.

102.131.

74. Maltese law currently provides for the protection of vulnerable situations of migrant children through the Children and Young Persons (Care Orders) Act.

Eradication of violence

75. Malta accepts recommendations: 102.69, 102.71, 102.72, 102.73.

76. Malta accepts in part recommendation: 102.67.

77. Malta does not accept recommendations: 102.68, 102.70.

102.67, 102.68.

78. Malta considers that these recommendations are already addressed in the Criminal Code and, therefore, Malta is not accepting these recommendations. The Criminal Code also provides for aggravating circumstances when rape is committed on the spouse, person engaged to be married, persons related with consanguinity amongst other aggravations.

102.69, 102.71.

79. Malta is currently in the process of reviewing national legislation with a view to ratifying the Istanbul Convention signed in May 2012. The recommendation in question is featured in the Convention.

80. Malta will continue taking necessary measures to protect women from violence, including through the stepping up of law-enforcement measures as necessary.

102.72.

81. Legislative amendments are being discussed in Parliament in order to ensure that corporal punishment of any form on minors be considered as a criminal offence.

102.73.

82. Malta is currently committed towards reviewing current legislation in order to further enhance the protection of minors.

Sexual and reproductive health policy

83. Malta accepts recommendation: 102.74.

84. Malta does not accept recommendations: 102.48, 102.75, 102.76, 102.77, 102.78, 102.79, 102.80, 102.100, 102.101, 102.102.

102.74, 102.75, 102.76, 102.77, 102.78, 102.79, 102.80.

85. Although the position of the Government of Malta was expressed in paragraphs 113 and 114 of A/HRC/WG.6/17/MLT/1, Malta reiterates that the right to life is an inherent right of every human being – this includes the unborn child, from its conception. Abortion is a direct contradiction to the right to life.

Justice and security

86. Malta accepts recommendations: 102.87, 102.91.

87. Malta does not accept recommendation: 102.48.

102.87.

88. Malta has set up a Commission for the Reform of Justice in order to address the problems associated with the conclusion of cases within a reasonable time.

102.91.

89. Legislative amendments are being discussed in Parliament in order to increase the age of criminal responsibility of minors from that of nine years to fourteen years.[5]

Education

90. Malta accepts recommendations: 102.99, 102.105.

Notes

[1] The existing EU instruments already provide far-reaching protection for both regular and irregular migrants, and safeguards that are often broader than those provided by the Convention.

[2] Persons who use any threatening, abusive or insulting words or behaviour, or else display any written or printed material which is threatening, abusive or insulting with the intent of stirring up violence or hatred on these grounds became liable to imprisonment upon conviction.

[3] This amendment will ensure that no law entails any provision that is discriminatory, nor any person acting by virtue of any written law may cause a person to experience discriminatory treatment on the ground of sexual orientation.

[4] Maltese authorities applied for Emergency Measures for the provision of a continuous and reliable food supply and also for bedding facilities to migrants residing in Detention Centres.

[5] Minors under the age of fourteen years will be deemed as incapable of formulating the requisite criminal intent. The amendments also provide that minors under the age of sixteen will be exempt from criminal responsibility if the minor acted without mischievous discretion.